



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

April 11, 2019

Representative James G. Townsend
House Republican Floor Leader
State Capitol Building
490 Old Santa Fe Trail
Santa Fe, NM 87501
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Sent Via Electronic and First-Class Mail

Re: Amended Submission of Draft Petition for Referendum for Chapter 45 of New Mexico Laws of 2019, an Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties

Dear House Republican Floor Leader Townsend:

On April 02, 2019, you submitted to my office an amended draft referendum petition for Chapter 45 of New Mexico Laws of 2019, An Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties. This new draft followed my March 21, 2019, determination that your initial draft petition, submitted on March 11, 2019, did not satisfy each mandated legal element.

After a careful and thorough review of your second draft petition, I have determined that it also does not satisfy each mandated legal element. Therefore, I am unable to approve and certify the petition for circulation.

As required by NMSA 1978, Section 1-17-8(B)(2), I have outlined below each deficiency of the draft petition:

1. You have failed to submit a referendum petition in the form proscribed by Section 1-17-2, wherein the statute requires an all cap, title of “PETITION FOR REFERENDUM” and not “PETITION FOR REFERENDUM of AN ACT RELATING TO CRIME; REQUIRING A BACKGROUND CHECK WHEN CONDUCTION SALES OF A FIEARM; PROVIDING PENALTIES” ; and,
2. As I previously noted in my March 22, 2019, determination of your initial draft referendum petition, under Article IV, Section 1 of the New Mexico Constitution, Chapter 45 of New Mexico Laws of 2019, An Act Relating to Crime; Requiring a Background Check When Conducting Sales of a Firearm; Providing Penalties is a law providing for the public peace, health and safety. Therefore, it is not a law subject to referendum.

As the basis for my determination has not changed, I have included it herein for your reference. The test for determining whether a particular law falls within the referendum exceptions that are enumerated in Article IV, Section 1 is whether it “bears a valid, reasonable relationship to the preservation of public peace, health or safety.” Otto v. Buck, 1956-NMSC-040, ¶ 20, 61 N.M. 123, 295 P.2d 1028. This is determined by examining the legislation “in the light of the history of the provision, including therein previous extant or repealed legislation on the subject; contemporaneous declarations of the legislature; the condition sought to be remedied by the act, as reflected by the enactment and in other matters of which we may properly take judicial notice...” *Id.* ¶ 7.

Referring to Chapter 45 of New Mexico Laws of 2019, you acknowledge in your March 11, 2019 cover letter that it “may be argued that it serves the public peace, health, and safety.” Aside from this acknowledgement, I underwent the process of carefully examining the legislative history, the contemporaneous declarations of the legislature and the conditions sought to be remedied by Chapter 45 of New Mexico Laws of 2019, as required by law.

Senate Bill 8, which ultimately became Chapter 45 of New Mexico Laws of 2019, was pre-filed prior to the start of the 2019 Legislative Session. The bill provided for background checks on certain sales of firearms. On January 16, 2019, during her State of the State address to a joint session of the State House of Representatives and State Senate, Governor Lujan Grisham stated, “[a]nd I want our educators, our students and our parents to hear me again: We will do everything in our power to ensure safety in your classrooms, in your community libraries, in your homes and public spaces. We all have a Constitutional right to be safe in our communities. Four hundred New Mexicans lose their lives to gun violence every year...That means when this legislature adjourns, I expect to sign a bill that will ban those convicted of assault from purchasing or possessing a gun, I expect strengthened background checks, and I expect tighter restrictions on safekeeping to ensure children do not have access to guns in the home. With common-sense reforms, we can build a state where people who should not have firearms, don’t, simple as that.”

During the 2019 Legislative Session, there was also public testimony on Senate Bill 8 in legislative committee hearings. At a January 30, 2019 Senate Judiciary Committee hearing, Committee Chairman Senator Richard Martinez stated that “[t]his bill is about saving lives and keeping guns out of the hands of criminals.” At this same hearing and at other committee hearings there was testimony in support of Senate Bill 8 from multiple law enforcement officials, the Bernalillo County District Attorney, the Director of Moms Demand Action New Mexico and other groups and citizens, who discussed personal tragedies attributed to gun violence and statistics outlining how states who had implemented similar legislation have seen decreases in gun violence and deaths. The Director of Moms Demand Action noted the names of leaders and organizations who supported Senate Bill 8, including numerous heads of law enforcement agencies, Mayors, the New Mexico Chapter of American College of Physicians and the New Mexico Public Health Association. Also at the January 30, 2019 Senate Judiciary committee hearing, New Mexico Voices for Children Senior Policy Advisor Bill Jordan testified as to his belief that Senate Bill 8 would reduce child gun deaths in New Mexico.

On March 4, 2019, upon passage of Senate Bill 8 by both chambers, Governor Lujan Grisham issued a press release titled “Governor Lujan Grisham cheers House passage of legislation expanding background checks, boosting public safety.” Upon signing Senate Bill 8 into law on March 8, 2019, Governor Lujan Grisham issued another press release titled “Gov. Lujan Grisham signs Senate Bill 8, enacting a meaningful, effective check on lethal violence in New Mexico communities”. In that release the Governor provided that “[t]he new law improves public safety by expanding required background checks on firearm purchase to include private gun sales, closing loopholes for certain sales like those made online or at gun shows.” The release further quoted Senate Bill 8 sponsor, Senator Richard Martinez as stating that “this legislation is about one thing: saving lives” and bill sponsor Representative Debbie Sariñana referred to the bill as “a common-sense measure that will keep New Mexicans safe and keep guns out of the hands of criminals.”

As I have previously explained, this legislative history and contemporaneous public statements definitively establish that Chapter 45 of New Mexico Laws of 2019 bears a valid, reasonable relationship to the preservation of public peace, health or safety, and it was clearly enacted by the legislature for those purposes. Therefore this law is constitutionally excluded from referendum under Article IV, Section 1 of the New Mexico Constitution.

The assertion in your letter that “neither the Secretary of State nor the Attorney General has the authority to unilaterally determine if a given piece of legislation meets the public peace, health and safety standard described in the New Mexico Constitution” is simply incorrect. I call to your attention to the cases wherein our New Mexico Supreme Court has examined the question of referendum petitions submitted to the Secretary of State for approval and certification under Article IV, Section 1 of the New Mexico Constitution. See Hughes v. Cleveland, 1943-NMSC-029, 47 N.M. 230, 141 P.2d 192 (holding that a law imposing an excise tax on cigars and cigarettes and allocating the proceeds of the tax to an old age assistance provided for the preservation of public health and was therefore excepted from referendum); Otto v. Buck, 1956-NMSC-040, 61 N.M. 123, 295 P.2d 1028 (holding that a law regulating the size and weight of vehicles on state highways was excepted from

referendum because it was reasonably related to the preservation of public peace, health or safety); and Linn, State ex rel. v. Romero, 1949-NMSC-049, 53 N.M. 402, 209 P.2d 179 (holding a law establishing an excise tax on motor fuels to provide funds to be used for highway construction and to be used to pay interest and debts payable is a law excepted by the State Constitution from those which the people are given the right by referendum to disapprove, suspend or annul).

In Hughes, the Secretary of State refused to file signed petitions and cited that “under the referendum clause of the constitution she was neither obliged nor permitted to file petitions seeking reference of a law providing for preservation of the public peace, health or safety, of a kind which **she deemed** the act involved to be” *Id.* ¶ 2. In Otto, the Secretary of State acted upon an opinion received from the Attorney General when she refused to refer an act or to approve or originate a popular name for a referendum petition. The Attorney General opinion advised that, “[t]he enactment in question was not subject to referendum upon the grounds that is a law providing for the preservation of the public peace, health or safety.” *Id.* ¶ 3. The Attorney General further refused to approve the instruction to canvassers and petition signers. In Linn, the Secretary of State, upon the advice of the Attorney General, refused to accept or file petitions presented to her “because the referendum provision of the Constitution (as she asserts) is not applicable to the act involved” and among the reasons cited, “the act is a law ‘providing for the preservation of the public peace, health and safety.’” *Id.* ¶ 6.

In all of these cases, the question of whether a law was not subject to referendum under Article IV, Section I of the New Mexico Constitution only came before the Court following the Secretary of State appropriately fulfilling a legally mandated duty to review the petition and make a determination based on the strict legal requirements for referendum petitions, as dictated by the New Mexico Constitution, State statutes, and current New Mexico case law.

For the reasons outlined herein, I cannot legally approve and certify your amended draft referendum petition. I have consulted with the Office of the Attorney General on this determination.

Sincerely,


Maggie Toulouse Oliver
New Mexico Secretary of State